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PUBLIC SERVICE
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October 6, 2008

VIA HAND DELIVERY

Stephanie L. Stumbo
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

**RE: An Examination of the Application of the Fuel Adjustment Clause of Kentucky
Utilities Company From November 1, 2007 Through April 30, 2008**
Case No. 2008-00285

Dear Ms. Stumbo:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's Petition For Approval to Deviate From Rule in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Yours very truly,

W. Duncan Crosby III

WDC:ec
Enclosures
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF THE APPLICATION OF)	
THE FUEL ADJUSTMENT CLAUSE OF)	
KENTUCKY UTILITIES COMPANY FROM)	CASE NO. 2008-00285
NOVEMBER 1, 2007 THROUGH APRIL 30, 2008)	
)	

PETITION FOR APPROVAL TO DEVIATE FROM RULE

Kentucky Utilities Company (“KU”) petitions the Kentucky Public Service Commission (“Commission”) to grant KU approval, pursuant to 807 KAR 5:011 § 14, to deviate from the Notice of Public Hearing requirement¹ in the above-captioned proceeding because KU has substantially complied with the Commission’s regulation. In support of this petition, KU states as follows:

1. Pursuant to KRS 424.200, newspaper publication of rate change hearings must be in accordance with the Commission’s regulations.
2. The Commission’s regulations prescribe that newspaper publication of a rate change hearing must occur in a newspaper of general circulation in the areas to be affected “one time not less than seven nor more than twenty-one days prior to the hearing.” 807 KAR 5:011 § 8 (5).
3. The purpose of the Commission’s rate change notice regulations is to ensure that members of the public have sufficient notice and a meaningful opportunity to participate, individually or through representative agencies, in this proceeding. As stated by the Kentucky Supreme Court:

¹ 807 KAR 5:011 § 8 (5).

Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved.²

Publication of Notice

4. On August 22, 2008, the Commission ordered KU to submit to an examination on the application of its fuel adjustment clause (“FAC”) from November 1, 2007 through April 30, 2008. The hearing will be held on October 7, 2008.

5. In accordance with the Commission’s notice regulations, on September 22, 2008, KU contacted the Kentucky Press Association to arrange for a Notice of Public Hearing to be published, prior to September 30, 2008, in 94 newspapers in KU’s service areas.

6. KU’s efforts notwithstanding, the following small local newspapers did not publish notice prior to September 30, 2008.³ In reviewing these deviations, KU respectfully requests that the Commission consider that timely published notice was provided throughout the vast majority of KU’s service territory including the two newspapers of largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*.

a. The *Carlisle Mercury*, published in Nicholas, Kentucky and serving Nicholas County, set publication for October 1, 2008, one day outside of the “not less than seven (7)... days prior to the hearing” requirement.

b. The *Liberty Casey County News*, published in Liberty, Kentucky, also published the notice on October 1, 2008, one day outside of the rule.

² *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

³ See Affidavit of the Kentucky Press Service attached as Exhibit I.

c. The *Middlesboro Daily News*, serving Bell County, did not publish the notice; however, the *Pineville Sun*, also serving Bell County, ran the notice inside the period of the rule.

d. The *Morganfield Union County Advocate*, published in Morganfield, Kentucky and serving Union County, published the notice on October 1, 2008, one day outside of the rule; however, the *Sturgis News*, also serving Union County, ran the notice within the period of the rule.

e. The *Princeton Time Leader*, serving Princeton and Caldwell County, also published the notice on October 1, 2008, one day outside of the rule.

Request for Deviation from Rule

7. In view of the timely published notice KU has provided throughout the vast majority of the newspapers in its service territory – including the two newspapers of largest circulation in the Commonwealth, the *Lexington Herald-Leader* and the *Louisville Courier-Journal*, KU respectfully requests a deviation from the Commission’s Notice of Public Hearing regulation with respect to the instances of non-conformity cited above. Eighty-nine newspapers, whether the legally required newspapers or not, published timely notice. Of the remaining five, four ran the notice one day outside of the rule. The service territory of the fifth newspaper was reached by the timely notice of another paper.

8. As noted at the beginning of this Petition, the Kentucky Supreme Court has stated, “Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently

informed on the public question involved.”⁴ KU respectfully submits that it has substantially complied with the requirements of 807 KAR 5:011 § 8 (5), therefore achieving the purpose of the regulation, namely ensuring that the public has sufficient notice of the proceeding and a meaningful opportunity to participate, individually or through representative agencies. KU therefore respectfully requests the Commission to grant a deviation from its Notice of Public Hearing regulation, deeming KU’s substantial compliance to be sufficient compliance with the regulation in this proceeding.

WHEREFORE, Kentucky Utilities Company respectfully requests that, pursuant to 807 KAR 5:011 § 14, the Commission grant a deviation from its Notice of Public Hearing regulation, deeming KU’s substantial compliance to be sufficient compliance with the regulation in this proceeding.

Dated: October 6, 2008

Respectfully submitted,

By: 

Kendrick R. Riggs
W. Duncan Crosby, III
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Counsel for Kentucky Utilities Company

⁴ *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (1983) (citing *Queenan v. City of Louisville*, 233 S.W.2d 1010 (1950)). See also *Lyon v. County of Warren*, 325 S.W.2d 302 (1959) (publishing notice of bond referendum outside statutory time limits, accompanied by media attention and other means, held sufficient notice to public).

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Approval to Deviate from Rule was served via U.S. mail, first-class, postage prepaid, this 6th day of October 2008, upon the following persons:

Dennis G. Howard II
Assistant Attorney General
Office of the Kentucky Attorney General
Office of Rate Intervention
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202

A handwritten signature in black ink, appearing to read "Michael L. Kurtz", written over a horizontal line.

Counsel for Kentucky Utilities Company

EXHIBIT 1

NOTARIZED PROOF OF PUBLICATION

COMMONWEALTH OF KENTUCKY

COUNTY OF Franklin

Before me, a Notary Public, in and for said county and state, this 2nd day of October, 2008, came Rachel McCarty, personally known to me, who, being duly sworn, states as follows: that she is the Advertising Assistant of the Kentucky Press Service, Inc.; that she has personal knowledge of the contents of this affidavit; and that the publications included on the attached list published the Legal Notice in the form also attached at the request of Kentucky Press Service, Inc for Kentucky Utilities Company. Said Legal Notice pertains to the public hearing ordered by the Kentucky Public Service Commission in Case No. 2008-00285.

Rachel McCarty
Signature

Bonnie F. Howard
Notary Public
My Commission Expires: 9-18-12

(SEAL)

[Attachments: (1) List of Publications; (2) Sample Published Legal Notice]

KENTUCKY PRESS SERVICE

**101 Consumer Lane
(502) 223-8821**

**Frankfort, KY 40601
FAX (502) 875-2624**

Rachel McCarty Advertising Dept.

List of newspapers running the Notice to Kentucky Utilities Company Customers. Attached tearsheets provide proof of publication:

Barbourville Mountain Advocate: 9-25
Bardstown KY Standard 9-26
Bardwell Carlilse Co. News: 9-24
Bardwell Carlilse Weekly: 9-24
Beattyville Enterprise: 9-25
Bedford Trimble Banner: 9-24
Berea Citizen: 9-25
Brooksville Bracken Co. News: 9-25
Brownsville Edmonson News: 9-25
Calhoun McLean Co. News: 9-25
Campbellsville Central KY News: 9-25
Carlisle Mercury: 10-1
Carrollton News Democrat: 9-24
Cave City Barren Co. Progress: 9-24
Central City Leader News: 9-24
Central City Times Argus: 9-24
Clinton Hickman Co. Gazette 9-24
Columbia Adair Progress 9-25
Corbin Times Tribune: 9-26
Cumberland Tri City News 9-24
Cynthiana Democrat 9-25
Dawson Springs Progress 9-25
Eddyville Herald Ledger 9-24
Elizabethtown Hardin Independent 9-25
Elizabethtown News Enterprise 9-26
Falmouth Outlook 9-30
Fleming Messenger 9-29
Flemingsburg Gazette 9-24
Florence Boone Co. 9-25
Frankfort State Journal 9-26
Fulton Leader 9-24
Georgetown Graphic 9-26
Glasgow Daily Times 9-26
Greensburg Record Herald 9-24
Harlan Enterprise 9-26
Harrodsburg Herald 9-25

Hartford Ohio Co. Times News: 9-25
Henderson Gleaner 9-26
Hickman Courier 9-25
Hodgenville Larue Herald 9-24
Hopkinsville KY New Era 9-25
Irvine Citizen Voice Times 9-25
Irvine Estill Co. Tribune 9-24
Lagrange Oldham Era 9-25
Lancaster Central Record 9-25
Lawrenceburg Anderson News 9-24
Lebanon Enterprise 9-24
Leitchfield News Gazette 9-27
Leitchfield Record 9-25
Lexington Herald Leader 9-25
Liberty Casey Co. News 10-1
London Sentinel Echo 9-26
Louisville Courier Journal 9-26
Madisonville Messenger 9-26
Manchester Enterprise 9-25
Marion Crittenden Press 9-25
Maysville Ledger Independent 9-26
Middlesboro Daily News--did not run
Morehead News 9-26
Morganfield Union Co. Advocate 10-1
Mt. Sterling Advocate 9-25
Mt. Vernon Signal 9-25
Munfordville Hart Co. News 9-25
New Castle Henry Co. Local 9-24
Nicholasville Jessamine Journal 9-25
Owensboro Messneger Inquirer 9-26
Owenton News Herald 9-24
Owingsville Bath Co. Outlook 9-24
Paducah Sun 9-26
Paris Bourbon Citizen 9-24
Pineville Sun 9-25
Princeton Times Leader 10-1
Providence Journal Enterprise 9-25
Richmond Register 9-26
Russell Springs Times Journal 9-25
Sebree Banner 9-25

Page 2

Shelbyville Sentinel News 9-26
Shepherdsville Pioneer News 9-24
Smithland Livingston Ledger 9-24
Somerset Commonwealth Journal 9-26
Springfield Sun 9-24
Stanford Interior Journal 9-25
Sturgis News 9-24
Taylorsville Spencer Magnet 9-24
The Advocate Messenger 9-26
Three Forks Tradition 9-24
Versailles Woodford Sun 9-25
Warsaw Gallatin News -24
Whitley City McCreary Record 9-30
Whitley City McCreary Voice 9-25
Wickliffe Advance Yeoman 9-24
Williamsburg News Journal 9-24
Williamstown Grant Co. News 9-25
Winchester Sun 9-26

NOTICE OF PUBLIC HEARING

The Public Service Commission of Kentucky has issued an order on August 22, 2008 scheduling the hearing to be held on October 7, 2008 at 10:00 a.m. (Eastern Daylight time) in Hearing Room 1 of the Commission's offices located at 211 Sower Boulevard in Frankfort, Kentucky, for the purpose of cross-examining witnesses in Case No. 2008-00285 which is *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Utilities Company from November 1, 2007 through April 30, 2008.*

Kentucky Utilities Company
220 West Main Street
Louisville, Kentucky 40202